



October 31, 2017

The Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Batalla Vidal, et al., v. Duke, et al.*, No. 16-cv-4756 (NGG) (JO)
State of New York., et al. v. Trump, et al., No. 17-cv-5228 (NGG) (JO).

Dear Judge Garaufis:

The *Batalla Vidal* Plaintiffs and Plaintiff States oppose Defendants' proposed schedule for resolving the remaining arguments presented in their Motion to Dismiss filed on October 27, 2017. The interests of judicial economy and speedy resolution of this matter would be better served by retaining the Court's original briefing schedule.

This Court's original schedule will allow the parties' briefing to take into account necessary threshold questions, most significantly whether the Administrative Record filed on October 6, 2017, ECF No. 77-1, constitutes the complete Administrative Record for review. Defendants' motion to dismiss contends that the Administrative Record is complete and denies the role of the Attorney General in the decision to terminate DACA without explaining their prior contrary statements. *See* Defs.' Mem., ECF No. 95-1 at 22-23, 25-28. Moreover, Defendants argue that this Court is tasked with assessing Plaintiffs' arbitrary and capricious claim under the Administrative Procedure Act based on the administrative record. Defs.' Mem., ECF No. 95-1 at 23. Defendants have also asked the Court of Appeals to bar this Court's order to complete the Administrative Record via their mandamus petition. *See* Defs.' Mandamus Pet., No. 17-3345 (2d Cir. 2017) at 4. It would be inefficient for this Court to preliminarily resolve the remaining portion of Defendants' motion to dismiss before receiving guidance from the Court of Appeals. It would be error for this Court to rule on Defendants' motion without first resolving whether the Administrative Record is complete. *See* *Dopico v. Goldschmidt*, 687 F.2d 644, 654 (2d Cir. 1982).

For these reasons, Plaintiffs respectfully request that this Court retain its original briefing schedule or, if it seeks resolution of Defendants' motion earlier, delay further briefing until the record-completeness issues have been resolved.

Respectfully submitted,

/s/ Joshua A. Rosenthal

David Chen, Law Student Intern[†]
Susanna D. Evarts, Law Student Intern[†]
Victoria Roeck, Law Student Intern[†]
Healy Ko, Law Student Intern[†]
Hannah Schoen, Law Student Intern[†]
Emily Villano, Law Student Intern[†]
Muneer I. Ahmad, Esq.[†]
Marisol Orihuela, Esq.[†]
Michael J. Wishnie, Esq. (MW 1952)
JEROME N. FRANK LEGAL SVCS. ORG.
michael.wishnie@yale.edu
Phone: (203) 432-4800

Amy S. Taylor, Esq. (AT 2056)
Deborah Axt, Esq. (DA 4885)
MAKE THE ROAD NEW YORK
301 Grove Street
Brooklyn, NY 11237
Phone: (718) 418-7690

Jessica R. Hanson, Esq. [†]
Mayra B. Joachin, Esq. [†]
Karen Tumlin, Esq. [†]
NATIONAL IMMIGRATION LAW CENTER
3450 Wilshire Blvd. #108-62
Los Angeles, CA 90010
Phone: (213) 639-3900

Justin Cox, Esq.[†]
NATIONAL IMMIGRATION LAW CENTER
PO Box 170208
Atlanta, GA 30317
Phone: (678) 279-5441

Joshua A. Rosenthal, Esq.[†]
NATIONAL IMMIGRATION LAW CENTER
1121 14th Street NW
Suite 200
Washington, DC 20005
Phone: (202) 216-0261

Attorneys for Batalla Vidal Plaintiffs

/s/Lourdes M. Rosado

Lourdes M. Rosado, Bureau Chief
Civil Rights Bureau
Office of the New York State
Attorney General
120 Broadway, 23rd Floor
New York, New York 10271
Lourdes.Rosado@ag.ny.gov
Tel. (212) 416-8252
Fax (212) 416-8074

Genevieve C. Nadeau [†]
Assistant Attorney General
Office of the Attorney General of
Massachusetts
One Ashburton Place
Boston, MA 02108
genevieve.nadeau@state.ma.us
Tel. (617) 727-2200

Colleen M. Melody [†]
Civil Rights Unit Chief
Office of the Attorney General of
Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
ColleenM1@atg.wa.gov
Tel. (206) 464-7744

Attorneys for Plaintiff States

cc: All Counsel (via ECF)

[†]Admitted *pro hac vice*